

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court <u>southern</u>		District of <u>NEW YORK</u>	
Name (under which you were convicted): <u>Frankie Perez</u>		Docket or Case No.: <u>08:CR-798-DLC</u>	
Place of Confinement:		Prisoner No.: <u>61269-054</u>	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <u>v. FRANKIE PEREZ</u>	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court for the Southern District of New York
500 Pearl St, NY, NY 10007
- (b) Criminal docket or case number (if you know): 08:CR-798-DLC
2. (a) Date of the judgment of conviction (if you know): 4/8/2009
- (b) Date of sentencing: 4/6/2009
3. Length of sentence: 168 months life supervise release
4. Nature of crime (all counts): 18 USC 2422 (b) enticement of a minor
5. (a) What was your plea? (Check one)
 (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:

- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____
- _____
- _____
- _____
- _____
- _____

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____
- _____
- _____
- _____
- _____
- _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANT OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My ATTORNEY Failed To File an Evidentiary Hearing, Motions, and my ATTORNEY never notified me before my direct appeal as I told my ATTORNEY that I wanted to appeal but I was never notified on any aspects of my appeal until it was over and done with as my ATTORNEY never TALKED with me AT ALL. Counsel Allowed The Government to breach Their Plea Agreement.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ ? ☒

(2) If you did not raise this issue in your direct appeal, explain why: I HAVE NO IDEAL AS I HAVE NEVER BEEN GIVEN ANY PAPERWORK ON MY DIRECT APPEAL SO I HAVE NO WAY OF KNOWING WHAT WAS FILED AS I HAVEN'T TALKED TO MY ATTORNEY SINCE SENTENCING.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: Government violated Rule 11 Plea Agreement

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Government Violated Their Rule 11 Plea Agreement and so has The
Courts As The courts accepted The Plea Agreement to which calls for
A sentence of 120 months imprisonment and 5 years supervised release.
At sentencing The Government asked for a greater sentence than that
on The Rule 11 Plea Agreement

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ ? ☒(2) If you did not raise this issue in your direct appeal, explain why: I HAVE NO IDEAL
AS I HAVE NEVER BEEN GIVEN ANY PAPERWORK ON MY DIRECT APPEAL SO I
HAVE NO WAY OF KNOWING WHAT WAS FILED, AS I HAVEN'T TALKED TO MY ATTORNEY
SINCE SENTENCING.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: Prosecutor misconduct

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Government Lied To The Defense and The courts as They Failed To
Produce Evidence That They had seized From The Defendant That could
show favorable for The ~~case~~ defense of The defendant

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ ? ☒

(2) If you did not raise this issue in your direct appeal, explain why: SAME ANSWER AS
HAS GIVEN FOR Ground ONE and FOR Ground TWO

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: Judicial ~~FP~~ ~~misconduct~~ misconduct

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Government lacked jurisdiction to prosecute the defendant as the Government failed to prove that the defendant violated Federal Law as the defendant's property that the Government seized can not be shown that the defendant charge violated Federal Law and therefore does not fall under Federal Jurisdiction

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ ? ☒ ~~A~~

(2) If you did not raise this issue in your direct appeal, explain why: SAME AS Grounds one,
Ground Two, and Ground Three

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____
- _____
- _____
- _____
- _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Jennifer Brown, Federal Public defender, office
Southern District of New York

(b) At arraignment and plea: SAME AS ABOVE

(c) At trial: _____

(d) At sentencing: SAME AS ABOVE

(e) On appeal: Edward ZAS - Federal Public Defender office I WAS Told
That Did My Appeal, But I NEVER TALKED TO ANYONE NOR HAVE I seen any Paperwork.

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion. * I never found out anything about my direct appeal as my attorney never talked to me once I was sentenced and I was not aware of any timeline and also I have found out that jurisdiction can never be waived and I never waived jurisdiction. Also I found out that the courts and the prosecutor violated my Rule 11 stipulated plea agreement as the defendant plead guilty per the plea agreement of 10 yrs in prison with 5 yrs supervised release. If the defendant knew that the courts and the prosecutor would of breached their plea agreement and being lied too the defendant would never of plead guilty as the government never had proof that the defendant violated federal law. The defendant is asking this court to waive the timeline as the defendant has raised serious merits and a serious issue over the lack of jurisdiction that the federal government never had to try nor convict the defendant as the defendant did not work for the United States Government nor was any of the defendant's seized property could be linked to any violation of federal law or federal jurisdiction.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

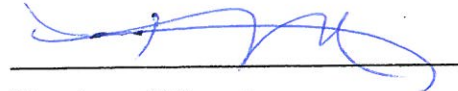
Therefore, movant asks that the Court grant the following relief: Defendant's conviction
Reversed and Vacated and an Evidentiary Hearing ordered and defendant
writ back to court. Plea originally written be given or else conviction vacated.
or any other relief to which movant may be entitled.



Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct,
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on April 29, 2013
_____ (month, date, year).

Executed (signed) on April 29, 2013 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * * *